IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.535 OF 2006

Mr. Dhirajlal Gordhandas Hansaliya ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. Surel Shah for the applicant.

Mr. Y.S. Shinde, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 13th February, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant has an apprehension that he is likely to be arrested in connection with an offence which is punishable under section 120-B, 420, 467, 468, 471, 472 of the Indian Penal Code read with section 13(2) and section 13(1)(d) of the Prevention of Corruption Act. The applicant is a partner in Firm which carries on business under the name and style of M/s Mont Vert Association and is a builder by profession. A complaint was lodged against the applicant and the owners of certain lands which were situated at Pimpri. It is alleged that the owners of

the lands had forged the Urban Land Ceiling Certificate which was issued by the competent authority and the forged certificate showed that there was no surplus vacant land in the name of the said owners and, on the basis of this forged certificate, they had applied for building permission. This certificate was of the year 1999. Subsequently, on inquiry, it was noticed that the said bogus certificate was submitted to the Corporation and the building permission was obtained. The investigation therefore had commenced and in the said investigation, it transpired that the owners of the land had forged the said Certificate. It further transpired that the application was made by the applicant through the firm in the year 2004 seeking fresh orders from the Urban Land Ceiling Department and, while doing so, details of the earlier forged certificate which was obtained in the year 1999 were not disclosed. It was, therefore, submitted that the applicant and the owners of the land had entered into a conspiracy alongwith the public servant to obtain the sanction for construction of buildings on their lands.

3. The learned Counsel appearing on behalf of the applicant submitted that the applicant was admittedly not concerned in any way in respect of the forged

certificate which was obtained in the year 1999 as, at that time, he was not a partner of the firm and that he became a partner subsequently in the year 2003-2004. He further submitted that if at all any offence of forgery was committed, at the highest, the owners of the land would be said to have committed the said forgery. He submitted that the applicant had no knowledge about the earlier forged certificate as the said fact was within the knowledge of the owners of the property. He submitted that, therefore, at the highest, the applicant could be charged for the offence under section 471 of the Indian Penal Code which is a bailable offence. The learned Counsel further submitted that all other accused had been released on bail and, therefore, the custodial interrogation of the applicant was not necessary. He invited my attention to the orders which are passed by the Sessions Court in respect of the other accused who are released on bail.

4. The learned APP, on the other hand, invited my attention to the complaint which was filed by the PSI in which details of the offence have been stated. He submitted that the Police had stumbled upon this fact of illegal use of the forged document and that, after inquiry was made and after further investigation,

several such cases were brought to the light. He submitted that, therefore, merely because other accused have been released on bail, this is not a fit case for grant of an anticipatory bail.

5. I have heard the learned Counsel for the applicant and the learned APP for the State at length. In my view, this is not a fit case for grant of an anticipatory bail. A perusal of the FIR discloses commission of serious offence. It is alleged that the accused had conspired together and had committed the said offence. Though it may be true that the said forged certificate which surfaced for the first time in the year 2001 and, at that time, the applicant was not in any way concerned with obtaining the forged certificate, the fact remains that the application has been made by the applicant in the year 2004 for obtaining fresh building permission. All other accused have been released on bail after their custodial interrogation was completed. Thus, the applicant cannot seek parity merely because other accused have been released on bail. Thus, looking at the serious nature of the offence which is alleged to have been committed, in my view, the applicant is not entitled to be released on anticipatory bail. Application for anticipatory bail is, accordingly

rejected.

6. However, after surrendering if the applicant makes an application for regular bail before the Trial Court, the same shall be considered on its own merits and mere refusal or dismissal of the present application for anticipatory bail may not be construed to mean that the applicant is not entitled to grant of regular bail. Therefore, any observation made by this Court while rejecting the application for an anticipatory bail should not be construed as an expression of opinion on merits of the case and trial court shall decide the application for bail on its own merits without being influenced by this order.

7. Application is accordingly disposed of.

V.M. KANADE, J.